GENERAL SCHEME

of a

Criminal Procedure Bill

As approved for publication by the Government on 01/04/2014

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HEAD 1 – INTERPRETATION

Provide that –

In this Act –

“Preliminary trial hearing” means a hearing held in accordance with head 2;

Head 2 - PRELIMINARY TRIAL HEARINGS

Provide that –

(1) Where an accused person is before the Circuit Court, the Central Criminal Court or a Special Criminal Court, a judge of the court concerned, or in the case of a Special Criminal Court no less than three judges of that court, may of the court's own motion or upon the application of the prosecutor or the accused, hold a preliminary trial hearing.

(2) One or more preliminary trial hearings may be held prior to the empanelling of the jury in a case before the Circuit Court or the Central Criminal Court and before the commencement of the trial in a case before a Special Criminal Court.

(3) The accused shall be arraigned at the start of the preliminary trial hearing unless he or she has already been arraigned.

(4) At a preliminary trial hearing the court may, upon its own motion or upon the application of the prosecutor or the accused, make: -

a) an order that certain evidence may or may not be admitted at the trial;

b) an order that [the trial on any charge should be prohibited/stayed permanently] [any charge be struck from the indictment] where it appears to the court that there is a real or serious risk of an unfair trial;

c) an order that the trial of an accused person be carried out separately from the trial of another accused person;

d) an order that any count on the indictment be tried separately from any other count on the indictment;

e) any order which it could make during a trial of an accused in the absence of a jury,

f) such other order as appears necessary to the court to ensure that due process and the interests of justice are observed.

(5) An application or order made under subhead (4) may include any application or order which is required by law to be made during the currency of a trial. Any application or order made under subhead (4) shall be deemed to have been made in the trial concerned and any such order shall be binding in its effect upon the trial judge or judges and the jury.

(6) The court may, if satisfied that it is expedient for the purpose of ensuring that the accused will not be prejudiced in his or her trial, do any one or more of the following:—

a) subject to subhead (8), exclude the public or any particular portion of the public or any particular person or persons except bona fide representatives of the Press from the court during the hearing;

(b) prohibit the publication of information in relation to the proceedings or any particular part of them or impose restrictions or limitations on such publication, for such period as it deems appropriate.

(7) The provisions of subhead (6) are in addition to any other provision of law that governs the exclusion of the public or any particular portion of the public or any particular person or persons from the court or that governs the prohibition of the publication of information in relation to the proceedings or any particular part of them or that imposes restrictions or limitations on such publication.

(8) In any proceedings where the accused is a person under the age of eighteen years, a parent or other relative or friend of that person shall be entitled to remain in Court during the whole of the hearing.

(9) A person who contravenes an order or direction of the court under subhead (6) shall, without prejudice to his or her liability for any other offence of which he or she may be guilty, be guilty of an offence under this section and shall be liable –

(a) on summary conviction thereof to a Class A fine or to imprisonment for a term not exceeding 12 months or to both such fine and imprisonment, or

(b) on conviction on indictment to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

(10) The judge referred to in subhead (1) means, in the case of the Circuit Court, a judge assigned to the circuit of that court in which the trial concerned is to take place.

(11) Subject to subhead (5), the Circuit Court, the Central Criminal Court or a Special Criminal Court, may during the course of a trial make any order listed in paragraphs a) to f) of subhead (4) whether or not such an order is within the inherent jurisdiction of the court.

(12) Rules of court may provide for notice, pleadings and the hearing of evidence in relation to applications under subhead (4).

NOTES:
Pre-trial procedures have been considered by a number of groups including the Working Group on the Jurisdiction of the Courts (Fennelly Report), the Report of the Committee on Pilot Preliminary Hearings, the National Steering Committee on Violence Against Women Legal Issues Sub-Committee, the Working Group to Identify and Report on Efficiencies in the Criminal Justice System, and most recently by the Expert Group On Article 13 Of The

European Convention On Human Rights (McDermott Report). While much has been, and is being, done by the Courts and practitioners to ensure the fair and efficient operation of the criminal trial process within the bounds of current legislative provisions, this proposed measure reflects the recommendations of many of the above-mentioned working groups to make statutory changes allowing for preliminary trial hearings.

The Head is intended to provide for the widest range of matters which a court could reasonably address in advance of the empanelling of a jury. The intention is that, insofar as possible, all contentious matters concerning the process of the trial and the evidence to be admitted will be settled before a jury is empanelled. This should result in a smooth presentation of the evidence to the jury, thus allowing them to focus on their tasks as adjudicators of fact without unnecessary interruptions for legal argument. Equally, the preliminary trial hearing will allow for matters which would ultimately prevent a case being submitted to a jury to be identified in advance thus avoiding the empanelling of a jury and subjection of a person to an unnecessary trial.

This legislation should facilitate the management of the trial process in a way that leaves as much discretion as possible to the judiciary to ensure that all the norms of due process and the rights of parties are respected.

Subhead (1) sets out that courts which hear trials on indictment may hold a preliminary trial hearing on their own motion or upon application of the prosecutor or the accused.

Subhead (2) allows for the preliminary hearing to happen before a jury is empanelled or in the case of the Special Criminal Court before the commencement of the trial.

Subhead (3) requires that the accused, if not already arraigned, be arraigned at the outset of a preliminary trial hearing. This will ensure that the accused and the court are formally hear the charges on the indictment and understand what is at stake in the hearing.

Subhead (4) provides for orders to be made on a range of matters which might arise during the trial proper but are matters which can be decided on at the preliminary trial hearing therefore minimising disruption and delays within the trial itself.

Subhead (4)(a) allows for all applications concerning the admission of evidence. It is intended to that this would include any such application the substance of which may be governed by common law or by other statutory provisions. For example, it is intended that an application in accordance with section 3 of the Criminal Law (Rape) Act 1981 (to admit evidence about any sexual experience of a complainant with a person other than that accused) could be made at a preliminary trial hearing and that the conditions of section 3 of the 1981 would all apply at that hearing. This would be advantageous to all concerned including victims and accused persons. Subhead (5) is of particular relevance to such applications which are governed by other statutory or common law provisions.

Subhead (4)(b) provides for the making of an order where it appears to the court that there is a real or serious risk of an unfair trial. This could arise for example, in a case where an accused asserts that delay will prejudice his case and wishes to prevent the trial from proceeding. At present (following the jurisprudence established by rulings in *The State*

(O'Connell) v Fawsitt [1986] IR 362 and subsequent cases) the accused must seek the relief of prohibition by way of judicial review. In a pre-trial hearing, the court can make an appropriate order to uphold the rights of the accused to due process and a fair trial before the jury is empanelled and without the accused having to go through the process of seeking leave to apply from the High Court. Subhead (11) is also relevant to the issue of prejudicial delay.

Subhead (5) sets out that applications and orders made at a preliminary hearing are deemed to be made at the trial and are binding upon the trial. Consideration had been given to formally incorporating the preliminary hearing within the trial proper, however, for practical reasons; it could not be guaranteed that the same judge would preside over the preliminary hearing as would preside over the trial proper. Therefore, if the preliminary hearing is to be of benefit, it must be clear that rulings made at a preliminary hearing are binding on the trial. It is equally important that where the law requires a particular application to be made during the currency of a trial that there is no doubt that jurisdiction is conferred upon a preliminary hearing to deal with such an application. This subhead is one on which the views of stakeholders will be particularly sought during the public consultation.

The provisions of subhead (6) are modelled in part on section 20, Criminal Justice Act 1951, now repealed. The related provision in subhead (9) for an offence where an order under subhead (6) is breached reflects the serious consequences which can result from a breach, e.g. where a trial for a serious offence such as murder or rape is prohibited because of prejudicial disclosure or publicity.

Subhead (11) is to ensure that during the trial proper, a court can make any order that might be made at a preliminary trial hearing. This would apply, for example, where concerns arose during the trial proper that a delay in bringing the prosecution gave rise to prejudice or that evidence which the prosecution sought to adduce could not fairly be admitted. While it is unlikely that such concerns would not be raised and addressed at a preliminary hearing, it is important to dispel any doubt that may exist as to the power of a court during the trial proper to ensure due process. Where a particular issue was raised during the trial proper, the court would, of course (by virtue of subhead (5)) be bound by any relevant ruling made at a preliminary trial hearing.

Subhead (12) provides for rules of court governing applications under subhead (4), this is particularly relevant in relation to orders under subhead (4)(a) & (b). Consideration will be required regarding the matters which should be covered by Rules of Court, e.g. the hearing of oral evidence, written pleadings, etc.

The provisions of this Head can be contained in the Criminal Procedure Bill as a stand alone provision or inserted by amendment into the Criminal Procedure Act 1967.

HEAD 3 - DECLARATION OF CONSTRUCTIVE ACQUITTAL

Provide that –

(1) Where the Circuit Court, the Central Criminal Court or a Special Criminal Court, whether at a preliminary trial hearing or in the course of a trial, orders the exclusion of certain evidence the prosecutor may make an application to the said court for a declaration of constructive acquittal in accordance with this section.

(2) The Court shall grant an adjournment, if sought by the prosecutor, for the purpose of considering whether to bring an application for a declaration of constructive acquittal.

(3) In a case where the order excluding the evidence in question is made at a preliminary trial hearing an application for a declaration of constructive acquittal must be made on notice to the accused, without delay, and in any event within 21 days of the making of the order excluding the evidence in question.

(4) In a case where the order excluding the evidence in question is made during the course of a trial, an application for a declaration of constructive acquittal must be made before any evidence or further evidence on the charges is heard by the jury, or, in the case of a special criminal court, the Court.

(5) Where the Court is satisfied that the evidence that it excluded was evidence without which a jury would be unlikely to convict the accused of the offence concerned, it shall issue a declaration that the accused has been constructively acquitted, and the accused shall be deemed to have been acquitted.

(6) Where a person is acquitted in accordance with subhead (5), the prosecutor may appeal the acquittal in accordance with section 23 (1) of the Criminal Procedure Act 2010.

NOTES:

As it stands, Section 23 of the Criminal Procedure Act 2010 provides for the prosecution to appeal an acquittal where a person is tried on indictment and acquitted. The appeal is to the Supreme Court on a question of law. The appeal can result in the acquittal being overturned and a re-trial ordered.

The appeal under section 23 would be restricted to rulings which erroneously excluded ''compelling evidence'. A jury verdict on the merits of the case based on the reception of all admissible evidence is not subject to appeal.

The provision in this head is to address circumstances where the court of trial excludes evidence which is fundamentally important to the case for the prosecution. In such circumstances, the prosecutor may be of the view that she or he cannot reasonably proceed with the prosecution in good faith, but, because the trial has not reached an acquittal (whether by the jury on the merits of the case or by direction of the judge) she or he has no avenue to appeal the ruling of the trial judge excluding the compelling evidence.

HEAD 4 - JUDICIAL REVIEW AND SLIP RULE

Provide that –

(1) An application for leave to apply for judicial review in respect of criminal proceedings shall not be made unless, prior to such application for leave –

(a) where any of the circumstances referred to in subhead (2), applies, an application has been made been made to that court in accordance with subhead (2) , or

(b) where appropriate alternative relief is available from the court of trial in whether at a preliminary trial hearing or in the course of a trial, an application has been made to that court.

(2) A court which has made an order in criminal proceedings may, in any of the circumstances referred to in the following paragraphs, on application made on notice by the prosecution or the accused, make the order referred to in the paragraph concerned –

(a) where there has been a clerical mistake in the order, or an error arising therein from any accidental slip or omission – an order correcting such mistake or error,

(b) where the order concerned does not, as drawn, correctly express what the court actually decided and intended – an order rectifying that deficiency,

(c) where there has been any other error in the order which does not render the conduct of the proceedings procedurally unfair having regard to the provisions of the Constitution – an order correcting such error.

(3) An application for an order referred to in subhead (2) shall be made within fourteen days from the date of the order concerned or such further period as the court in the criminal proceedings concerned may permit.

(4) The powers exercisable in the circumstances referred to in paragraphs (a) and (b) of subsection (2) are in addition to any other power of the Court to do all or any of the things which those paragraphs authorise.

(5) Rules of Court may provide for matters relating to the making of applications and orders under this subhead (2).

NOTES:
The purpose of the Head is to avoid unnecessary recourse to Judicial Review where suitable reliefs are available from the criminal courts. It is intended to apply in two broad circumstances. Firstly, it is to apply in circumstances where an application may be made to a

trial court for an appropriate alternative remedy at a trial hearing or a preliminary trial hearing. This includes remedies newly available to a trial court at a preliminary trial hearing, such as the power to prohibit or permanently stay a charge in accordance with Head 2 (4) (b). Secondly, it is to apply where a remedy is available from a summary or indictable trial court via the expanded slip rule in subhead (2).

This Head is intended to apply to judicial review applications and not to applications in accordance with Article 40.4 of the Constitution or High Court Bail applications where a person's liberty is immediately at stake.

The slip rules (for clerical errors) are currently provided for in court rules as follows, with varying level of detail and procedure attached:

- Order 12, Rule 17 District Court Rules – provides that clerical mistakes may be corrected at any time by the court
- Order 65, Rule 3 Circuit Court Rules – as above but also includes County Registrar and provides for motion on notice to the party sought to be affected by such correction.
- Order 28, Rule 11 (substantially revised in 2009) - more detailed and provides for one procedure where parties consent and one where they do not consent.

At present, slip rule issues may be addressed without a formal hearing before the court. If the basic slip rule is expanded as proposed, consideration may be required as to the circumstances in which a hearing will be necessary.

Order 84 (amended by S.I.No. 691 of 2011) provides for the procedures to be applied in relation to applications for judicial review. There is a 2 stage process involved, and an application for judicial review cannot be made unless the court has granted leave to apply. The Rules set out the grounds for an application for such leave (Rule 20). In *G v DPP* [1994] 1 I.R.374 it was held by the Supreme Court (Finlay C.J.) that an applicant for leave must satisfy the High Court in a prima facie manner by the facts set out in the affidavit and submissions made in support of the application of specified matters – one of these is "that the only effective remedy, on the facts established by the applicant, which the applicant could obtain would be an order by way of judicial review or, if there be an alternative remedy, that the application by way of judicial review is on all the facts of the case, a more appropriate method of procedure."

The preclusion to making an application for Judicial Review in subhead (1) is intended only to require that an application for alternative relief has been made. Subhead (1) is silent as to whether the application has been heard or ruled upon by the trial court. It would be open to the High Court to consider whether an applicant has made appropriate efforts to seek an alternative remedy, and in circumstances where the trial court has not ruled on the application for alternative remedy (for whatever reason) to decide that an application for leave to apply for judicial review may proceed.

Subhead (1) is intended to refer to various applications which could be made to a court of trial including applications seeking to prevent a trial from proceeding on the grounds of prejudicial delay.

Subhead (2), in light of the recommendations of the McDermott Report, seeks to make a limited extension to the jurisdiction of courts to address errors in their orders beyond simple clerical errors so that orders which do not correctly express what the court actually decided and intended can be rectified and also provides that the court may correct an error in the order which does not render the conduct of the proceedings procedurally unfair having regard to the provisions of the Constitution.

Subhead (3), provides that an application under subhead (2) must be made within 14 days from the date of the relevant order unless the court permits a further period.

Subhead (5) provides for Rules of Court to govern applications under subhead (2). Consideration will have to be given to the interaction between the time limits in such rules and those applicable in the superior court rules for judicial review applications so as to ensure that applicants' opportunities are not unduly curtailed.

HEAD 5 - ELECTRONIC TRANSMISSION OF WARRANTS

Provide that –

(1) Notwithstanding any other enactment or rule of law, a court may issue and or transmit a warrant by any means capable of producing a legible record, including by electronic means.

(2) Rules of Court may provide for matters relevant to the issuing, transmission and authentication of warrants.

(3) In this Head –

"electronic means" includes electrical, digital, magnetic, optical, electromagnetic, biometric and photonic means of transmission of data and other forms of related technology by means of which data is transmitted; and

"legible record" includes such a record produced by a person, other than an officer of the court or Courts Service staff member, to whom the warrant has been transmitted by the court.

NOTES:

This provision aims to address a problem identified by the Working Group to Identify and Report on Efficiencies in the Criminal Justice System. It is particularly relevant to videolink hearings where the court is at a considerable distance from where the prisoner is held. It is

considerably more convenient and efficient in many circumstances (for both the prisoner and the Irish Prison Service) for a court appearance to occur via videolink. Efficiency is then undermined where the Irish Prison Service has to despatch a prison officer to the court to receive a committal warrant. Making specific statutory provision for the electronic issuing and transmission of warrants in criminal cases will remove any doubt as to whether such issuing and transmission is permissible.

Consideration is required as to whether this provision should be limited to certain types of warrants due to the variety of warrants in existence.

Subhead (2) provides for the detailed procedures to be dealt with in rules of court. Existing rules governing warrants will need to be reviewed and amended as necessary to provide for electronic issuing and transmission of warrants.

Subhead (3), provides for a definition of "electronic means" is by reference to the same definition used in section 917EA of the Taxes Consolidation Act 1997 and section 140 of the Personal Insolvency Act 2012. Consideration will have to be given to the adequacy of the definition in light of the means of transmission intended or likely to be used in future. It also provides for a definition of "legible record".

HEAD 6 - SUBSTITUTION OF SECTION 33 OF PRISONS ACT 2007

Provide that –

Section 33 of the Prisons Act 2007 is substituted by the following -

"Certain applications to court to be heard using videolink.

33.— (1) This section applies to criminal proceedings before a court where—

(*a*) the application or proceeding is one of those specified in *subsection (7)*,

(*b*) the accused or person convicted of the offence concerned ("the prisoner") is in a prison,

(*c*) the application is made or to be made by the Director of Public Prosecutions or by the prisoner, and

(*d*) the prisoner is legally represented or has obtained legal advice or been given the opportunity of obtaining or being provided with such advice.

(2) An application to which this Head applies may be heard without the prisoner being present in court unless the court directs otherwise on being satisfied that—

(*a*) to do so would be prejudicial to the prisoner,

(*b*) the interests of justice require his or her presence at the hearing,

(*c*) the facilities provided by a live television link between the court and the prison concerned are not such as to enable—

(i) the prisoner to participate in, and to view and hear, the proceedings before the court,

(ii) those present in the court to see and hear the prisoner, and

(iii) the prisoner and his or her legal representative to communicate in confidence during the hearing,

(*d*) to do so is otherwise inappropriate having regard to—

(i) the nature of the application,

(ii) the complexity of the hearing,

(iii) the age of the prisoner, and

(iv) his or her mental and physical capacity,

or

(*e*) other circumstances exist that warrant the prisoner's presence in court for the hearing.

(3) An application for such a direction may be made *ex parte* to the judge, or a judge, of the court concerned by or on behalf of the Director of Public Prosecutions or the prisoner.

(4) On such an application the judge, if he or she considers it desirable in the interests of justice to do so, may require notice of the application to be given to the prisoner or his or her legal representative or, as the case may be, to the Director of Public Prosecutions.

(5) Where the provisions of this Head are complied with in relation to the hearing of an application to which this section applies, the prisoner is deemed to be present in court for the purposes of any enactment or rule of law or order of any court requiring the presence in court of an accused or convicted person during criminal proceedings against him or her.

(6) Nothing in this Head affects the right of the prisoner to be present during any criminal proceedings other than the hearing of an application to which this section applies.

(7) The following applications (other than applications under *subsection (3)* are specified for the purposes of *subsection (1)*:

(*a*) an application for bail or free legal aid;

(b) where the prosecutor and the prisoner consent to the application being heard without the prisoner being present in court, an application relating to the arraignment of the prisoner;

(*c*) in relation to proceedings on indictment, any other application except—

(i) an application relating to the arraignment of the prisoner, unless subhead (7)(b) applies,

(ii) an application relating to the sentence of the prisoner, unless subhead (7) (d) (i) (II) applies,

(iii) an application made after the court has started to hear opening statements or evidence to be considered in reaching a verdict on a charge on the indictment, or

(iv) any other application that appears to the court to require the presence of the prisoner at the hearing, including—

(I) an application relating to the capacity of the prisoner to stand trial, or

(II) an application to dismiss the charges against the prisoner on the ground that there is not sufficient evidence to put him or her on trial;

(*d*) in relation to proceedings in the District Court –

(i) where the prosecutor and the prisoner consent to the matter being heard without the prisoner being present in court –

(I) an application for the accused to be sent forward for trial on indictment, or

(II) the acceptance of a plea of guilty on a charge and the sentencing of the person in relation to that charge,

(ii) any other application to the Court before the date on which—

(I) a trial before it begins or the court accepts a plea of guilty, or

(II) the accused is sent forward for trial or sentence;

(*e*) any application in appeal proceedings, the hearing of an appeal, or any subsequent proceedings.

(8) In this section "criminal proceedings" means proceedings for an offence and includes any appeal proceedings or subsequent proceedings."

NOTES

The Working Group to Identify and Report on Efficiencies in the Criminal Justice System has considered a number of issues relating to the use of the videolink system. This head provides for an amended section 33 of the Prisons Act 2007. Instead of videolink hearings being dependent on an application to the court and a direction of the court as the legislation requires at present, the new provision would allow for (not require) videolink hearings to

happen by default. Provision is made for either the prosecutor or the prisoner to apply to the court to direct that the prisoner be present in court for the hearing.

The revised section 33 will also allow for arraignment hearings to be heard via videolink where the parties both consent. Additionally, where both parties consent, the District Court will be empowered to accept a plea of guilty and impose sentence in relation to that plea via videolink.

HEAD 7 - REMAND WHERE FAILURE TO ESTABLISH OR BREAKDOWN OF VIDEOLINK

Provide that -

(1) Section 24 (5) of the Criminal Procedure Act 1967 is amended by the insertion of the following paragraph after paragraph (b):

"(c) Where –

(i) it is not possible for an application to the Court in proceedings specified for the purpose of section 33(1) of the Prisons Act 2007 to be heard, or for the hearing of that application to be continued, by reason, as the case may be, of -

(I) a failure to establish the live television link to be used for the hearing, or

(II) a breakdown of the live television link during the hearing,

(ii) the application is made by or in relation to a person who at the time of the application had been remanded in custody in the proceedings concerned,

and

(iii) the Court is satisfied that it is not practicable that that person be brought before it for the purpose of commencing or continuing the hearing on the same day,

the Court may, in that person's absence, remand him or her for such further period, not exceeding 15 days, as it considers reasonable.

(d) Where -

(i) it is not possible for an application to the Central Criminal Court, Circuit Court or [a] [the] Special Criminal Court in proceedings specified for the purpose of section 33(1) of the Prisons Act 2007 to be heard, or for the hearing of that application to be continued, by reason, as the case may be, of -

(I) a failure to establish the live television link to be used for the hearing, or

(II) a breakdown of the live television link during the hearing,

(ii) the application is made by or in relation to a person who at the time of the application had been remanded in custody in the proceedings concerned, and

(iii) the court concerned is satisfied that it is not practicable that that person be brought before it for the purpose of commencing or continuing the hearing on the same day,

the court concerned may, in that person's absence, remand him or her for such further period, not exceeding 15 days, as it considers reasonable."

NOTES:

The remand powers of the District Court are specified in detail by Part III (sections 21 to 32) of the Criminal Procedure Act 1967. Section 21 provides –

> "21.Where an accused person is before the District Court in connection with an offence the Court may, subject to the provisions of this Part, remand the accused from time to time as occasion requires."

Section 24 sets out the periods of remand which apply. It is therefore suggested that provision for remand by the District Court in cases of failure to establish or breakdown of a live television link would most appropriately be included in Part III of the 1967 Act, and more particularly by insertion after section 24(5), which subsection confers a power of remand in respect of a person remanded in custody who is unable to be brought before the Court at the expiry of the remand period due to illness or accident, or any other good and sufficient reason." Section 24(5)(a) was substituted by section 37(c) Criminal Procedure Act 2010 to extend the application of this provision from the limited conditions such as accident and illness so that it would also include "for any other good and sufficient reason. It is understood that this was to deal with situations such as where a person is before a number of courts and remand dates coincide or where they are before the High Court on their own application.

As there is no specific statutory regime governing remand powers of the indictment jurisdictions, it is suggested that fresh provision - along the lines of subhead (1)(d) - be made a for those jurisdictions in a separate subhead as above. However, consideration is required as to whether:

(a) it is appropriate to include such a provision in a section and part of an Act which deals with remands in the District Court , and
(b) It is appropriate to apply a specific timeframe in such situations in the context that no statutory regime appears to exist for remand situations in such courts, presumably including cases where a person is unable to attend due to illness or accident (or whether it should be left to the discretion of the court).

Section 24 of the 1967 Act generally refers to "person". The expression "accused or person convicted of the offence concerned" is used in section 33(1)(b), Prisons Act 2007, which paragraph introduces a shortened reference for that expression, viz. "the prisoner". It is suggested that "person" is more appropriate if the approach will be to amend section 24.

Section 33(9) of the Prisons Act 2007 provides:

> "(9) Where the provisions of this section are complied with in relation to the hearing of an application to which this section applies, the prisoner is deemed to be present in court for the purposes of any enactment or rule of law or order of any court requiring the presence in court of an accused or convicted person during criminal proceedings against him or her."

The non-functioning of the video link would displace this statutory assumption as to the presence in court of the person concerned.

Section 24(5) of the Criminal Procedure Act 1967, as amended, allows the court, if satisfied that a person remanded in custody is unable to be brought before the Court at the expiry of the remand period due to illness or accident, or any other good and sufficient reason, to remand for "such further period, which may exceed fifteen days, as the Court considers reasonable However, it may be queried whether the giving of a power of remand without express limitation as to its period (other than the criterion of reasonableness of the period) would, in circumstances of a failure/breakdown of equipment, be sufficiently certain and transparent. The Head, therefore, in contrast provides for a maximum of 15 days. In the case of a person remanded on bail, section 24(5)(b) provides for a period which may exceed eight days which is the same period applied in section 24(1)(b).

HEAD 8 - SUBSTITUTION OF SECTION 34 OF CRIMINAL PROCEDURE ACT 2010

Provide that –

Section 34 of the Criminal Procedure Act 2010 is substituted by the following -

"Expert evidence adduced by defence.

34.— (1) An accused shall not call an expert witness or adduce expert evidence unless leave to do so has been granted under this section.

(2) Where the defence intends to call an expert witness or adduce expert evidence, whether or not in response to such evidence presented by the prosecution, notice of the intention shall be given to the prosecution in the case of a trial upon indictment at least 28 days prior to the scheduled date of the start of the trial or any scheduled preliminary trial hearing whichever is earlier, or at such earlier date as a Judge of the court concerned shall direct, upon application by either party and in the case of a summary trial at least 10 days prior to the scheduled date of the start of the trial or at such earlier date as a Judge of the court concerned shall direct.

(3) A notice under *subsection (2)* shall be in writing and shall include—

(*a*) the name and address of the expert witness, and

(*b*) any report prepared by the expert witness concerning a matter relevant to the case, including details of any analysis carried out by or on behalf of, or relied upon by, the expert witness, or a summary of the findings of the expert witness.

(4) The court may grant leave to call an expert witness or adduce expert evidence even if no report or summary of the findings are included as required by *subsection (3)(b)*, if the court is satisfied that the accused took all reasonable steps to secure the report or summary before giving the notice.

(5) The court shall grant leave under this section to call an expert witness or adduce expert evidence, on application by the defence, if it is satisfied that the expert evidence to be adduced satisfies the requirements of any enactment or rule of law relating to evidence and that—

(*a*) *subsections (2)* and *(3)* have been complied with,

(*b*) where notice was not given at least 28 days prior to the scheduled date of the start of the trial or preliminary hearing in the case of a trial upon indictment, or at least 10 days prior to the scheduled date of the start of the

trial in the case of a summary trial, it would not, in all the circumstances of the case, have been reasonably possible for the defence to have done so, or

(*c*) where the prosecution has adduced expert evidence, a matter arose from that expert's testimony that was not reasonably possible for the defence to have anticipated and it would be in the interests of justice for that matter to be further examined in order to establish its relevance to the case.

(6) The prosecution shall be heard in an application under *subsection (4)* or *(5)*.

(7) A notice required by this section to be given to the prosecution may be given by delivering it to the prosecutor, or by leaving it at his or her office or by sending it by registered post to his or her office.

(8) Where the court grants leave under this section, the prosecution shall be given a reasonable opportunity to consider the report or summary before the expert witness gives the evidence or the evidence is otherwise adduced.

(9) In this section—

"expert evidence" means evidence of fact or opinion given by an expert witness, and

“expert witness” means a person who appears to the court to possess the appropriate qualifications or experience about the matter to which the witness's evidence relates.”

NOTES:
The purpose of this head is to facilitate more efficient preparation of trials. The amendment moves the notice requirement for a defendant intending to call an expert witness forward from 10 days before trial to 28 days before a trial on indictment or a preliminary hearing. As is the case with the existing provision subheads 5 (b) and (c) maintain discretion in certain circumstances for the court to admit expert evidence without notice.

The head also provides for a notice period of 10 days for summary trials.

HEAD 9 - PROVISION OF INFORMATION TO JURIES

Provide that –

(1) In any trial on indictment, the trial judge may order that copies of any or all of the following documents or materials shall be given to the jury in any form that the judge considers appropriate:

(a) any document admitted in evidence at the trial,

(b) the transcript of the opening speeches of counsel or an audio recording of the same,

(c) any charts, diagrams, graphics, schedules or agreed summaries of evidence produced at the trial,

(d) the transcript of the whole or any part of the evidence given at the trial or an audio recording of the same,

(e) the transcript of the closing speeches of counsel or an audio recording of the same,

(f) the transcript of the trial judge's charge to the jury or an audio recording of the same,

(g) any other document that in the opinion of the trial judge would be of assistance to the jury in its deliberations including, where appropriate, an affidavit by an accountant summarising, in a form which is likely to be comprehended by the jury, any transactions by the accused or other persons which are relevant to the offence.

(2) If the prosecutor proposes to apply to the trial judge for an order that a document mentioned in subsection (1)(g) shall be given to the jury, the prosecutor shall give a copy of the document to the accused in advance of the application and, on the hearing of the application, the trial judge shall take into account any representations made by or on behalf of the accused in relation to it.

(3) Where the trial judge has made an order that an affidavit mentioned in subsection (1)(g) shall be given to the jury, the accountant concerned—

(a) shall be summoned by the prosecutor to attend at the trial as an expert witness, and

(b) may be required by the trial judge, in an appropriate case, to give evidence in regard to any relevant accounting procedures or principles.

(6) Section 57 Criminal Justice (Theft and Fraud Offences) Act 2001, section 110 Company Law Enforcement Act 2001, section 10 Competition Act 2002 and section 1078C Taxes Consolidation Act 1997 are hereby repealed.

Notes

This Head is intended to implement a recommendation in paragraph 10.27 of the Law Reform Commission Report on Jury Service (2013) in relation to complex and lengthy trials. Subheads (1) to (3) implement the recommendation that section 57 of the *Criminal Justice (Theft and Fraud Offences) Act 2001*, which concerns the provision of specified documentation to juries, should be extended to all trials on indictment.

The existing provisions in the 2001 Act, the Company Law Enforcement Act 2001, the Competition Act 2002 and the Taxes Consolidation Act 1997 are to be repealed to avoid any

confusion. It should be noted that the provision is a permissive one and its application is ultimately a matter for the trial judge.

Head 10 - AMENDMENT TO SECTION 4Q2 CRIMINAL PROCEDURE ACT 1967

Provide that –

Section 4Q(2)(b) of the Criminal Procedure Act 1967 is amended by the deletion of "4B(3) or (5)".

Notes:

Part 1A of the Criminal Procedure Act 1967, which contains section 4Q was inserted by section 9 of the Criminal Justice Act 1999 which provided for the abolition of preliminary examinations and the introduction of other procedures. The Criminal Justice (No.2) Bill 1997 Bill, after its consideration by Seanad Éireann, provided that after a person had been sent forward for trial the trial court would hear all subsequent applications (with the exception of depositions). However, a number of amendments were made to the Bill in Dáil Éireann including a change to the procedure to provide that the District Court would continue to deal with remand hearings until the book of evidence had been served, after which the accused would be sent forward for trial. It would appear that this amendment also required technical changes in some other provisions so that the reference to "trial court" was amended to " District Court". Section 4Q deals with 'Jurisdiction of Circuit Court to remand accused to alternative circuit and hear applications'. Section 4Q(2)(b) provides that "a reference in section 4B(3) or (5), 4E or 4P to the trial court shall be read as a reference to the alternative court to which the accused is remanded, and…" As section 4B deals with the service of documents on an accused there seems to be no need to a reference to this section as this process occurs before the accused is sent forward for trial and relates to District Court functions.

HEAD 11 – SHORT TITLE AND COMMENCEMENT

Provide that –

1. (1) This Act may be cited as the Criminal Procedure Act 2014.

(2) This Act shall come into operation on such day or days as the Minister for Justice and Equality may appoint by order or orders, either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.